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10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF NEVADA**

12 ROBERT HURD,  
13 Plaintiff,

14 v.

15 WALGREENS COMPANY, INC., A Foreign  
Corporation Doing Business in Nevada;  
16 DOES I through X, Inclusive; ROE  
BUSINESS ENTITIES I through X,  
17 Inclusive,  
18 Defendants.

Case No.: 2:16-cv-02686-RFB-PAL  
Judge: Richard F. Boulware, II  
Magistrate: Peggy A. Leen

**STIPULATED PROTECTIVE ORDER**

19 **1. PURPOSES AND LIMITATIONS**

20 Disclosure and discovery activity in this action are likely to involve production of  
21 confidential, proprietary, or private information for which special protection from public  
22 disclosure and from use for any purpose other than prosecuting this litigation may be  
23 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
24 following Stipulated Protective Order. The parties acknowledge that this Order does not confer  
25 blanket protections on all disclosures or responses to discovery and that the protection it  
26 affords from public disclosure and use extends only to the limited information or items that  
27 are entitled to confidential treatment under the applicable legal principles. The parties further  
28 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not

entitle them to file confidential information under seal; Local Rules of Practice, United States District Court, District of Nevada (“LRIA”) LR IA 10-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

## **2. DEFINITIONS**

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this

1 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
2 that party.

3 2.10 Party: any party to this action, including all of its officers, directors, employees,  
4 consultants, retained experts, insurers, claims handlers, and Outside Counsel of Record (and  
5 their support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
7 Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support services  
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
10 organizing, storing, or retrieving data in any form or medium) and their employees and  
11 subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
13 “CONFIDENTIAL.”

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
15 Producing Party.

16 **3. SCOPE**

17 The protections conferred by this Stipulation and Order cover not only Protected  
18 Material (as defined above), but also (1) any information copied or extracted from Protected  
19 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)  
20 any testimony, conversations, or presentations by Parties or their Counsel that might reveal  
21 Protected Material. However, the protections conferred by this Stipulation and Order do not  
22 cover the following information: (a) any information that is in the public domain at the time  
23 of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to  
24 a Receiving Party as a result of publication not involving a violation of this Order, including  
25 becoming part of the public record through trial or otherwise; and (b) any information known  
26 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
27 disclosure from a source who obtained the information lawfully and under no obligation of  
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1 confidentiality to the Designating Party. Any use of Protected Material at trial shall be  
2 governed by a separate agreement or order.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations imposed by  
5 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
6 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
7 claims and defenses in this action, with or without prejudice; and (2) final judgment herein  
8 after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of  
9 this action, including the time limits for filing any motions or applications for extension of  
10 time pursuant to applicable law.

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
13 Party or Non-Party that designates information or items for protection under this Order must  
14 take care to limit any such designation to specific material that qualifies under the appropriate  
15 standards. The Designating Party must designate for protection only those parts of material,  
16 documents, items, or oral or written communications that qualify – so that other portions of  
17 the material, documents, items, or communications for which protection is not warranted are  
18 not swept unjustifiably within the ambit of this Order.

19 If it comes to a Designating Party's attention that information or items that it designated  
20 for protection do not qualify for protection, that Designating Party must promptly notify all  
21 other Parties that it is withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
23 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
24 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly  
25 so designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but  
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1 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
2 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If  
3 only a portion or portions of the material on a page qualifies for protection, the Producing  
4 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
5 in the margins).

6 A Party or Non-Party that makes original documents or materials available for  
7 inspection need not designate them for protection until after the inspecting Party has indicated  
8 which material it would like copied and produced. During the inspection and before the  
9 designation, all of the material made available for inspection shall be deemed  
10 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied  
11 and produced, the Producing Party must determine which documents, or portions thereof,  
12 qualify for protection under this Order. Then, before producing the specified documents, the  
13 Producing Party must affix the “CONFIDENTIAL” legend to each page that contains  
14 Protected Material. If only a portion or portions of the material on a page qualifies for  
15 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by  
16 making appropriate markings in the margins).

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
18 Designating Party identify on the record, before the close of the deposition, hearing, or other  
19 proceeding, all protected testimony.

20 (c) for information produced in some form other than documentary and for any other  
21 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
22 container or containers in which the information or item is stored the legend  
23 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
24 protection, the Producing Party, to the extent practicable, shall identify the protected  
25 portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
27 designate qualified information or items does not, standing alone, waive the Designating  
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1 Party's right to secure protection under this Order for such material. Upon timely correction  
2 of a designation, the Receiving Party must make reasonable efforts to assure that the material  
3 is treated in accordance with the provisions of this Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right  
9 to challenge a confidentiality designation by electing not to mount a challenge promptly after  
10 the original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
12 process by providing written notice of each designation it is challenging and describing the  
13 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
14 written notice must recite that the challenge to confidentiality is being made in accordance  
15 with this specific paragraph of the Protective Order. The parties shall attempt to resolve each  
16 challenge in good faith and must begin the process by conferring directly (in voice to voice  
17 dialogue; other forms of communication are not sufficient) within 14 days of the date of service  
18 of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
19 confidentiality designation was not proper and must give the Designating Party an opportunity  
20 to review the designated material, to reconsider the circumstances, and, if no change in  
21 designation is offered, to explain the basis for the chosen designation. A Challenging Party  
22 may proceed to the next stage of the challenge process only if it has engaged in this meet and  
23 confer process first or establishes that the Designating Party is unwilling to participate in the  
24 meet and confer process in a timely manner.

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
26 intervention, the Designating Party shall file and serve a motion within 21 days of the initial  
27 notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
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will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.



1 If the Designating Party timely seeks a protective order, the Party served with the  
2 subpoena or court order shall not produce any information designated in this action as  
3 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
4 issued, unless the Party has obtained the Designating Party’s permission. The Designating  
5 Party shall bear the burden and expense of seeking protection in that court of its confidential  
6 material – and nothing in these provisions should be construed as authorizing or encouraging  
7 a Receiving Party in this action to disobey a lawful directive from another court.

8 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**  
9 **IN THIS LITIGATION**

10 (a) The terms of this Order are applicable to information produced by a Non-Party in  
11 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties  
12 in connection with this litigation is protected by the remedies and relief provided by this Order.  
13 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
14 additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
16 Party’s confidential information in its possession, and the Party is subject to an agreement with  
17 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all  
19 of the information requested is subject to a confidentiality agreement with a Non-Party;

20 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
21 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
22 information requested; and

23 (3) make the information requested available for inspection by the Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
25 days of receiving the notice and accompanying information, the Receiving Party may produce  
26 the Non-Party’s confidential information responsive to the discovery request. If the Non-Party  
27 timely seeks a protective order, the Receiving Party shall not produce any information in its  
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1 possession or control that is subject to the confidentiality agreement with the Non-Party before  
2 a determination by the court. Absent a court order to the contrary, the Non-Party shall bear  
3 the burden and expense of seeking protection in this court of its Protected Material.

4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
6 Material to any person or in any circumstance not authorized under this Stipulated Protective  
7 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
8 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
9 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
10 made of all the terms of this Order, and (d) request such person or persons to execute the  
11 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
13 **PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
15 produced material is subject to a claim of privilege or other protection, the obligations of the  
16 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
17 provision is not intended to modify whatever procedure may be established in an e-discovery  
18 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
19 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
20 of a communication or information covered by the attorney-client privilege or work product  
21 protection, the parties may incorporate their agreement in the stipulated protective order  
22 submitted to the court.

23 **12. MISCELLANEOUS**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
25 seek its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
27 Order no Party waives any right it otherwise would have to object to disclosing or producing  
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any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

### 13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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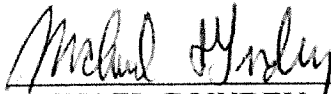
1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2  
3 DATED this 12<sup>th</sup> day of April, 2017

DATED this 12<sup>th</sup> day of April, 2017

4  
5 LAW OFFICES OF MICHAEL I.  
6 GOWDEY, LTD.

LAW OFFICE OF JAMES F. HOLTZ

7 



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Attorney for Defendant WALGREEN CO.

12 IT IS SO ORDERED:

13  
14   
15 UNITED STATES MAGISTRATE JUDGE

16 Dated: April 18, 2017

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, Michael I. Gowdy [print or type full name], of  
815 S. Carson Center [print or type full address], declare under penalty of perjury that I have  
read in its entirety and understand the Stipulated Protective Order that was issued by the United  
States District Court for the District of Nevada in the case of ROBERT HURD V.  
WALGREENS COMPANY, INC., ET AL. Case No.: 2:16-cv-02686-RFB-PAL. I agree to  
comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
District of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order,  
even if such enforcement proceedings occur after termination of this action.

Date: 4/12/17

City and State where sworn and signed: LAS VEGAS, NEVADA

Printed name: Michael I. Gowdy

Signature: Michael I. Gowdy